

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE MEDIAVILLA,

Plaintiff,

-against-

**DEFENDANTS' LOCAL
RULE 56.1 STATEMENT OF
UNDISPUTED FACT**

14 CV 8624 (VSB)

THE CITY OF NEW YORK, LT. ZIELINSKI; CHIEF ANGER;
PO CIARAMITARO; D.I. TZLOCZKOWSKI; D.I.
COKKINOS; LT. COOKE; LT. ALBANO;

Defendants.
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Defendants City of New York, Michael Zielinski, Steven Anger, Anthony Ciaramitaro, Inspector Cokkinos; and Lt. Albano, by their attorney Zachary Carter, Corporation Counsel of the City of New York, submit this statement pursuant to Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, setting forth the material facts to which they contend there is no genuine issue.

November 5, 2011 Incident

1. Plaintiff was a participant in the Occupy Wall Street movement. Exhibit A, ¶ 41.
2. On November 5, 2011 at around 3:30 plaintiff was in and around Foley Square. Exhibit A, ¶ 50.
3. Plaintiff was present at Foley Square, until the time of his arrest, participating in an Occupy Wall Street demonstration. Exhibit A, ¶ 51.
4. Police officers prevented Occupy protestors from ascending the steps of the Courthouse. Exhibit A, ¶ 52.
5. Police officers issued orders to disperse through a bullhorn. Exhibit A, ¶ 56.

6. Police officers attempted to disperse demonstrators from in front of the Courthouse as 60 Centre Street. Exhibit A, ¶ 58.
7. The video attached as Exhibit C depicts the demonstration in front of the New York Supreme Court building at 60 Centre Street. Exhibit C.
8. The video attached as Exhibit D depicts the demonstration in front of the New York Supreme Court building at 60 Centre Street. Exhibit D.
9. The video attached as Exhibit E generally depicts the demonstration in front of the New York Supreme Court building at 60 Centre Street. Exhibit E.
10. The video attached as Exhibit D depicts plaintiff's arrest approximately 14:50 into the video, with a timestamp on the video showing 3:19 p.m. Exhibit D, 14:50-15:00.
11. A large crowd of protestors gathered at the base of the steps of 60 Centre Street. Exhibit D, 00:00-04:15.
12. A less dense group of protestors can be seen across the street from 60 Centre Street at Foley Square. Exhibit D, 00:00-01:00
13. The protestors in front of 60 Centre street spanned the sidewalk from the building line to the street, and spanned at least the length of the courthouse steps. Exhibit D, 00:00-04:15.
14. The protestors in front of 60 Centre street formed a dense crowd. Exhibit D, 00:00-04:15.
15. Pedestrians can be seen in the area walking in Foley Square, on Worth Street, and on Lafayette Street. Exhibit D, 00:00-04:15.
16. Police officers stood near the base of the steps to 60 Centre and kept protestors off of the steps. Exhibit D, 00:00-04:15.

17. Protestors pushed against the line of police to get through. Exhibit D, 01:20-01:45; 02:30-02:34; 02:35-02:40.

18. Protestors grabbed and pulled the orange mesh police used to maintain the police line between police. Exhibit D, 02:25-02:30.

19. After several attempts to push through the police lines various protestors began signaling for protestors to sit down on the sidewalk. Exhibit D, 03:14-4:05.

20. Police used a bullhorn from the steps of 60 Centre Street to order the crowd to disperse stating: “You got to keep it moving. You’ve got to get off of this sidewalk. Ladies and Gentlemen you have to move you cannot stand here, you cannot stand here, you will be subject to arrest if you don’t keep it moving. Folks you’ve got to to keep moving. Ladies and gentlemen you’ve got to keep this area clear. Ladies and gentlemen can you clear this area? You’ve got to keep it moving. Ladies and Gentlemen you’ve got to clear this area.” Exhibit D, 04:18-5:25.

21. The timestamp on the video for the order in ¶ 18 is approximately 3:02 p.m.. Exhibit D, 04:18-05:25.

22. In response to the orders to disperse, protestors again signaled for protestors to sit on the sidewalk, performed a human microphone calling for protestors to sit down, and a number of protestors did sit down on the sidewalk at that time. 05:05-06:37.

23. Another protestor led a chant of “We want the steps” in response to the orders to disperse. Exhibit D, 05:57-06:22.

24. Lieutenant Zielinski issued orders to disperse through a bullhorn from the steps of 60 Centre Street stating “Ladies and gentlemen my name is Lieutenant Zielinski, I am with the Manhattan South Task Force, you are blocking pedestrian traffic. I am ordering you to

leave the sidewalk. If you do so voluntarily no charges will be filed against you. If you refuse to leave you will be placed under arrest and charged with disorderly conduct.”

Exhibit D, 06:42-07:08.

25. The timestamp on the video for the order in ¶ 24 is approximately 3:05 p.m.

Exhibit D, 06:42-07:08.

26. A woman can be seen being placed under arrest at the base of the steps. Exhibit D, 07:12.

27. In response to her arrest the crowd becomes agitated, yelling, pushing against the police line, with one man clearly yelling “get off of her” multiple times. Exhibit D, 07:12-07:40.

28. Lieutenant Zielinski twice ordered the crowd back from the steps through his bullhorn stating “Ladies and gentlemen you need to move back. Ladies and gentlemen you need to move back.” Exhibit D, 07:33-07:43.

29. A second police officer can be heard to order the crowd back through a bullhorn stating “Ladies and gentlemen you need to move back, lets go, you need to move back. Ladies and gentlemen you need to move back.” Exhibit D, 07:41-07:52.

30. The woman being placed under arrest in ¶ 26 was walked up the steps of 60 Centre Street by three female officers, two of whom are wearing light blue windbreakers. Exhibit D, 08:47-08:49.

31. The same moment referenced in ¶ 30 can be seen on Defendant’s Exhibit E. Exhibit E, 01:19-01:23.

32. The timestamp on the video for the woman being taken up the steps in ¶ 30 is approximately 3:07 p.m. Exhibit D, 08:47-08:49.

33. Lieutenant Zielinski continued to issue orders to disperse stating “Good afternoon ladies and gentlemen, my name is Lieutenant Zielinski, I am with the Manhattan South Task Force. I am ordering you to leave this area. If you don’t leave this area you will be charged with disorderly conduct.” Exhibit D, 08:57-09:10; Exhibit E, 01:30-01:46.

34. Throughout these warnings the crowd remains dense, agitated, and pushed against the police line. Exhibit D, 08:50-09:10.

35. However, following Lt. Zielinski’s order to disperse, some members of the crowd begin to leave, headed in the direction of Foley Square, across the street. Exhibit E, 01:30-02:39.

36. A protestor called for additional protestors to cross from Foley Square to 60 Centre Street, and the crowd chanted “Who’s streets?” “Our streets!” In response to the orders to disperse. Exhibit E, 02:49-03:18.

37. A second officer with a bullhorn proceeded through the crowd from the opposite side of the protests issuing orders to disperse. Exhibit D, 09:36-10:25.

38. The second officer with a bullhorn issued orders to disperse as he proceeded through the crowd, stating “Folks we need you to clear the sidewalk, thank you. Folks you have to clear the sidewalk, thank you. Folks we have to clear the sidewalk thank you.” Exhibit D, 09:35-10:10.

39. The timestamp on the video for the orders in ¶ 38 is approximately 3:08 p.m. Exhibit D, 09:36-10:25.

40. The second officer with a bullhorn continued to issue orders to disperse from within the crowd. Exhibit D, 10:10-11:00.

41. A third officer with a bullhorn issued orders to disperse from the courthouse steps, stating “folks you have to clear the sidewalk, thank you.” Exhibit D, 10:59-11:02; 11:14-11:17.

42. The crowd responded to the numerous orders to disperse by starting a chant of “We’re blocking pedestrian traffic.” Exhibit D, 10:54-11:10.

43. An officer announced through a bullhorn “Folks you need to clear the sidewalk thank you.” Exhibit D, 11:45-11:47.

44. Lieutenant Zielinski announced through a bullhorn “Ladies and gentlemen you’re going to have to leave this area. Right now it’s temporarily closed. Right now you have to leave the sidewalk. Right, because you’re blocking the walkways, it’s unsafe. You’re blocking the walkway, you need to move. Right now it’s a danger, it’s a hazard, you need to move.” Exhibit E, 03:25-03:46.

45. Lieutenant Zielinski announced through a bullhorn “Ladies and gentlemen right now you need to clear the sidewalk, it’s a hazard. You need to clear - it’s temporarily closed, we don’t want nobody to get hurt. Ladies and gentlemen, we need to you to move temporarily, start walking through, we don’t want nobody to get hurt.” Exhibit C, 00:09-00:13; Exhibit D, 12:05- 12:23; Exhibit E, 04:00-04:15.

46. Lieutenant Zielinski announced through a bullhorn “Ladies and gentlemen you need to clear the sidewalk. Right now it’s temporarily closed, we don’t want nobody to get hurt.” Exhibit C, 00:18-00:24; Exhibit D, 12:25-12:31; Exhibit E, 04:29-04:35.

47. An officer announced through a bullhorn “Ladies and gentlemen you got to clear the sidewalk please. Ladies and gentlemen please clear the sidewalk, thank you. Ladies and gentlemen please clear the sidewalk.” Exhibit D, 12:37-12:45.

48. An officer announced through a bullhorn “Ladies and gentlemen please clear the sidewalk, thank you. Ladies and gentlemen please clear the sidewalk, thank you.” Exhibit C, 00:51-00:57; Exhibit D, 12:58-13:05.

49. The second officer with a bullhorn announced “Clear the sidewalk, thank you. Thank you. Folks we have to clear the sidewalk. Clear the sidewalk. Clear the sidewalk. Thank you. Clear the sidewalk, nice and easy. Folks we got to clear the sidewalk. Thank you. Sir you got to go this way. This way sir. You got to go that way, thank you. Folks you have to clear the sidewalk, thank you. Folks you’ve got to go that way – sir you have to go that way - thank you. Exhibit D, 13:32-13:57.

50. The timestamp on the video for the order in ¶ 49 is approximately 3:12 p.m. Exhibit D, 13:32-13:57.

51. Lt. Zielinski announced through a bullhorn “Ladies and gentlemen, you need to clear the sidewalk. Right now it’s a hazard. It’s temporarily closed. It will be opened up later on.” Exhibit C, 01:13-01:18.

52. A uniformed officer can be seen directing a protestor to disperse, stating “go that way, go that way.” Exhibit C, 01:25-01:28.

53. Lt. Zielinski announced through a bullhorn “Right now the sidewalk is closed, you need to move on.” Exhibit C, 01:30-01:34; Exhibit E, 05:44-05:50.

54. Lt. Zielinski announced through a bullhorn “Right now the sidewalk is closed, it will be open very soon, we need you to move on so nobody gets hurt.” Exhibit E, 05:50-06:00.

55. The group across the street from 60 Centre, at Foley Square, grew considerably larger over the minutes while officers ordered the protestors to disperse. Exhibit D, 00:00-01:00; 12:20-13:50; 14:10-14:14; Exhibit E, 06:38-06:40.

56. There is no indication that officers issued any orders, or attempted to disperse the group at Foley Square. Exhibit C; Exhibit D; Exhibit E.

57. The second officer with a bullhorn announced “Folks you’ve got to clear the sidewalk, thank you. Folks this way please. Folks you’ve got to clear the sidewalk, thank you.” Exhibit D, 14:07-14:14.

58. The second officer with a bullhorn announced “Folks you’ve got to clear the sidewalk, thank you.” Exhibit D, 14:25-14:28.

59. Lieutenant Zielinski announced through a bullhorn “Ladies and gentlemen, the sidewalk is temporarily closed and a safety hazard, we need you to move –“ Exhibit D, 14:30-14:37.

60. Lieutenant Zielinski announced through a bullhorn “Ladies and gentlemen, you have to clear this sidewalk right now. It’s a safety hazard, it’s temporarily closed. We’ll allow you back later. You’re going to have to move, alright. Right now it’s a safety hazard you have to keep on moving.” Exhibit C, 06:34-06:46.

61. A group of protestors ignoring Lieutenant Zielinski’s order began a human microphone, and Lieutenant Zielinski announced through a bullhorn “Ladies and gentlemen, the sidewalk is closed, you have to move on. Ladies and gentlemen the sidewalk is temporarily closed. We need you to move on. We don’t want nobody to get hurt. Thank you for your cooperation.” Exhibit C, 06:53-07:08

62. Lieutenant Zielinski announced through a bullhorn “Ladies and gentlemen, just keep moving. Watch your step, we don’t want you to fall and get hurt.” Exhibit C, 07:10-07:13.

63. Lieutenant Zielinski announced “Ladies and gentlemen, this is all closed now. Go on, keep moving. Ladies and gentlemen we’re closing this temporarily, you need to keep moving. Move out of my way please, I’m asking you nicely. You have to move. You have to move sir. You have to move.” Exhibit C, 07:37-07:55.

64. When Lieutenant Zielinski stated “Move out of my way please, I’m asking you nicely.” He spoke to an individual in a hooded sweatshirt and backpack who had approached him very closely while he made the announcements. Exhibit C, 07:43-07:47.

65. When Lieutenant Zielinski stated “You have to move. You have to move sir. You have to move.” He spoke to an individual in a green hat. Exhibit C, 07:51-07:55.

66. After giving the orders in ¶ 63 Lieutenant Zielinski turned to a higher ranking officer behind him, and explained “They are moving. They are.” Exhibit C, 07:56-07:59.

67. Plaintiff approached Lieutenant Zielinski wearing a green camouflage hat, a black coat with an orange arm band, and holding a Constitution at approximately eye level. Exhibit C, 07:58-08:06.

68. As plaintiff approached, Lieutenant Zielinski announced through a bullhorn “You have to move.” Exhibit C, 08:00-08:02.

69. Plaintiff attempted to alert officers that he believed their actions violated the Constitution of the United States by yelling “Treason!” Exhibit A, ¶¶ 57, 59; Exhibit C, 07:58-08:28.

70. Lt. Zielinski personally told plaintiff “Move back, and get out of my way” when plaintiff came too close to the Lieutenant. Exhibit C, 08:03-08:05.

71. Lieutenant Zielinski then began to make another announcement to the crowd, beginning “Ladies and gentlemen - “ Exhibit C, 08:05-08:07.

72. As Lieutenant Zielinski turned and raised his bullhorn to begin the announcement to the lingering protestors, plaintiff approached him from behind, holding the Constitution up and shaking it as he stated “You swore an oath. You swore an oath.” Exhibit C, 08:05-08:07.

73. Lieutenant Zielinski stopped his announcement to the crowd to personally order Plaintiff back, stating “Move back. Move back sir. Move back. Move back.” Exhibit C, 08:06-08:10.

74. Plaintiff remained near Lieutenant Zielinski with his fist holding a Constitution at eye level, yelling “treason.” Exhibit C, 08:09-08:13.

75. Plaintiff can be heard yelling “Treason” at least three times shortly after being personally asked to step back from Lieutenant Zielinski. Exhibit C. 08:09-08:19.

76. Plaintiff was yelling in Lieutenant Zielinski’s face from a close distance, and moving to stay directly in front of Lieutenant Zielinski while he tried to order the crowd to disperse. Exhibit D, 14:37-14:45.

77. Lieutenant Zielinski, still trying to clear the sidewalk, announced through a bullhorn “The sidewalk is closed. You need to move.” Exhibit C, 08:15-08:19; Exhibit D, 14:42-14:44.

78. The last time plaintiff yelled “treason” into Lieutenant Zielinski’s face, plaintiff made a sharp movement even closer to the Lieutenant’s face. Exhibit D, 14:43-14:45.

79. Lieutenant Zielinski turned away from plaintiff and took a step towards the building line. Exhibit D, 14:45-14:47.
80. Plaintiff followed closely behind the Lieutenant, shouting “treason.” Exhibit D, 14:46-14:48.
81. Lieutenant Zielinski turned around quickly, startled by plaintiff. Exhibit D, 14:47-14:48.
82. Officer Ciaramitaro reached across the orange barrier and placed plaintiff under arrest. Exhibit D, 14:47-14:55.
83. Plaintiff continued shouting treason, and waived his left arm in the air nearly striking Lieutenant Zielinski while Officers attempted to get him under control. Exhibit D, 14:47-14:54.
84. Plaintiff was taken away from the other protestors and placed under arrest. Exhibit A, ¶ 60.
85. Plaintiff accepted an adjournment in contemplation of dismissal for those charges on or about July 24, 2013. Exhibit A, ¶¶ 72-73.
86. An officer subsequently directed “All right everybody out at the crosswalk, lets go. Get these people out of here.” Directing the protestors to Foley Square. Exhibit C, 09:22-09:29.
87. An officer with a bullhorn ordered “everybody’s got to move across the street, come on.” Exhibit C, 09:33-09:36.
88. The only force Plaintiff alleges is that his handcuffs were tight and painful. He suffered no injury, and required no treatment. He did not ask for officers to loosen his handcuffs. Exhibit A, ¶ 65.

November 12, 2011 Incident

89. On November 12, 2011, plaintiff was participating in another Occupy Wall Street demonstration. Exhibit A, ¶ 74.

90. Plaintiff was arrested at the November 12, 2011 demonstration. Exhibit A, ¶ 76.

91. Plaintiff was held for ten hours and released with a summons. Exhibit A, ¶ 77.

92. Plaintiff did not provide any additional facts regarding his November 12, 2011 arrest in either his complaint or amended complaint apart from those set forth in paragraphs 74-79 of his amended complaint. Exhibit A, ¶¶ 74-79.

93. Plaintiff necessarily had some knowledge of what occurred to him on November 12, 2011, but did not set that forth in bringing his lawsuit on the eve of the statute of limitations. Exhibit B, p. 10: 13-16.

94. Plaintiff did not seek a tolling agreement prior to filing the above facts for the November 12, 2011. Exhibit B, p. 12: 19-20.

95. Plaintiff's counsel conceded at the April 23, 2015 pre-motion conference "here we have a situation where within the statute we did not have sufficient facts that we could plead [regarding the November 12, 2011 incident] consistent with our obligations under Rule 11." Exhibit B, p. 12: 14-17.

96. Plaintiff alleges no injury or force related to the November 12, 2011 incident. Exhibit A, ¶¶ 74-79.

Dated: New York, New York
July 2, 2015

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